BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

JANIE E. FARRIS	)	
Claimant	)	
VS.	)	
	)	Docket No. 195,747
AUTOMOTIVE CONTROLS CORPORATION	)	
Respondent	)	
Self-Insured	)	
AND	)	
	)	
KANSAS WORKERS COMPENSATION FUND	)	

ORDER

Respondent requested Appeals Board review of the Award entered by Administrative Law Judge John D. Clark dated December 22, 1995. The Appeals Board heard oral argument by telephone conference.

APPEARANCES

Claimant appeared by her attorney, Dale V. Slape of Wichita, Kansas. Respondent, a qualified self-insured, appeared by its attorney, Garry W. Lassman of Pittsburg, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, David J. Bideau of Chanute, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the Award.

ISSUES

The respondent requested the Appeals Board to review the sole issue of nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs and hearing the arguments of the parties, the Appeals Board finds as follows:

The Administrative Law Judge determined claimant was eligible for permanent partial general disability benefits based on work disability. He awarded claimant a 68 percent permanent partial general disability, finding the claimant had lost 36 percent of her ability to perform work tasks and had a wage earning loss of 100 percent. The Administrative Law Judge found claimant's appropriate date of accident was December 17, 1993. Therefore, her eligibility for work disability was determined by the "new act" provisions of K.S.A. 44-510e.

The respondent argues claimant should be limited to permanent partial general disability benefits based on functional impairment only. Respondent contends claimant was offered a job within her present permanent work restrictions at a comparable wage. Respondent concludes claimant refused to perform this job for no good reason. Therefore, respondent asserts claimant's disability is limited to her functional impairment as specified in K.S.A. 44-510e. *See also,* Foulk v. Colonial Terrace, 20 Kan. App. 2d 277, 887 P.2d 140 (1994), rev. denied 257 Kan. 1091 (1995).

The record is clear that claimant suffered bilateral carpal tunnel syndrome from the repetitive work activities she performed for the respondent. Claimant testified both of her upper extremities became symptomatic as she worked in the original equipment manufacturing (OEM) department soldering wires with a heavy soldering gun in one hand and holding the soldering wire in the other hand.

At the time of claimant's first deposition testimony, May 12, 1995, she had been employed by the respondent for seven and one-half years. Claimant testified her upper extremities had been symptomatic for some time but accelerated to a point in December of 1993 that she had difficulty performing her work and she complained to the company nurse. The respondent sent her to Dr. Bradley S. King, the local company doctor in Independence, Kansas, for treatment. Dr. King took claimant off work on December 17, 1993, and ordered a nerve conductive study which was positive for bilateral carpal tunnel syndrome. Dr. King then referred claimant to Harry A. Morris, M.D., a board-certified orthopedic surgeon in Wichita, Kansas.

Dr. Morris first saw the claimant on January 24, 1994, and recommended surgical intervention to cure the effects of the carpal tunnel syndrome. Dr. Morris performed a carpal tunnel release on claimant's right upper extremity on February 11, 1994, and on her left

upper extremity on April 15, 1994. He released claimant to return to regular work for four hours per day on July 11, 1994. On October 12, 1994, the doctor released claimant with permanent restrictions of gripping and grasping activities limited to four hours per day. If claimant would work a full eight-hour day, Dr. Morris limited claimant's repetitive activities with her hands to 200 repetitions per hour. In accordance with the Guides to the Evaluation of Permanent Impairment, Fourth Edition, Dr. Morris rated claimant's permanent functional impairment at 6 percent whole person per hand for a combined whole person rating of 12 percent.

Respondent sent claimant for an independent medical examination to plastic surgeon, Brad W. Storm, M.D., located in Olathe, Kansas. Dr. Storm saw claimant once on October 31, 1994. Dr. Storm diagnosed claimant post-carpal tunnel surgery with defused tendonitis or overuse syndrome. He also recommended that claimant work half days at full duty. The doctor's restrictions for a full eight-hour shift were to limit her activities of lifting to 10 pounds, with no repetitive or forceful gripping, pinching, or grasping of the hand for over 10 times per minute or 600 times per hour. Dr. Storm also assessed claimant with a whole body permanent functional impairment of 12 percent. Before Dr. Storm testified at his deposition, the respondent had him review two video tapes which showed employees performing the work of racking and unracking parts in the paint department and performing various jobs in the OEM department. Dr. Storm opined that claimant should be able to perform the racking and unracking job, if she had no quotas. He further opined that if claimant was unable to perform the racking and unracking job then she would, likewise, have difficulty performing the OEM jobs.

Claimant returned to work for the respondent on July 12, 1994, for four hours per day, performing regular jobs in the OEM department. However, the record is not entirely clear as to whether claimant returned to the soldering job she described she was doing before she left work on December 17, 1993. The video tape admitted into evidence, during Dr. Storm's deposition, shows a number of different operations being performed in the OEM department but none required the use of a soldering gun. Nevertheless, claimant testified that she was capable of performing the jobs she had returned to on a half-day basis in the OEM department with little residual discomfort from her carpal tunnel surgeries.

The problem that arises in this case started on May 8, 1995, when respondent returned claimant to work a full eight-hour shift. Respondent transferred claimant out of the OEM department into the paint department. Here claimant was required to either hang, snap, or remove small parts from paint racks located on a moving conveyor system. Claimant testified the first day she was transferred the paint department was shut down and she was required to work in the molding department, trimming flashing with a knife from plastic molds. Claimant testified this repetitious activity caused her hands to be more symptomatic. Furthermore, claimant's asthmatic condition flared up at that time because of the dust and other contaminates in the air in the molding department area. Claimant missed two days of work because of her asthmatic problems.

The paint department started running on May 22, 1995, and claimant and a coworker racked parts that day. Claimant testified the repetitious racking made her hands worse. Finally on May 24, 1995, claimant left work at noon because of the worsening symptoms in her hands. After leaving work, claimant called Dr. Morris and explained to him her problems. Dr. Morris then took claimant off work until June 5, 1995. Dr. Morris in his return to work slip recommended that the respondent try to return the claimant to the OEM department on a trial-and-error basis until the respondent found claimant a job that did not aggravate her condition. However, the respondent returned claimant to the paint shop performing the repetitious racking and unracking parts. Claimant again, because of the worsening of her hands, had to leave work at noon on June 6, 1995. At the time claimant last testified by deposition, June 7, 1995, respondent had notified her that she would not be returned to the OEM department.

Both claimant and representatives of the respondent testified in detail in regard to the number of parts claimant was required to either rack or unrack in the paint department. The Appeals Board concludes the record supports a finding that the respondent required the claimant to perform repetitive activities utilizing Dr. Storm's restriction of 600 repetitions per hour and not Dr. Morris' 200 repetitions per hour. Both claimant's testimony and the testimony of Gerald High, supervisor of the paint department, established that the racking and unracking job in the paint department required claimant to perform more than the 200 repetitions per hour restrictions placed on claimant by Dr. Morris. The Appeals Board finds, as did the Administrative Law Judge, that Dr. Morris' opinion, because he was claimant's treating physician, as it relates to claimant's permanent restrictions should be given more weight in this case than the opinion of Dr. Storm, the independent medical examiner hired by the respondent who saw claimant only once. Therefore, the Appeals Board concludes that the full-time racking and unracking job the respondent returned claimant to work in May and June 1995 was outside the permanent restrictions placed on her by Dr. Morris. Additionally, claimant testified she was unable to perform this repetitious activity because symptoms in her upper extremities worsened to the point she had to leave work.

The Appeals Board finds the record established that claimant left work on June 6, 1995, and was not working the last time she testified on June 7, 1995. Therefore, since claimant is not engaging in a job that pays at least 90 percent of her pre-injury wage, claimant is not limited to her functional disability and is eligible for a work disability. *See* K.S.A. 44-510e(a). The Appeals Board also finds the facts in this case are not analogous to the Foulk case. Here the claimant attempted to return to work for the respondent. However, the offered work was not within her restrictions and, further, such work made her symptoms worsen to a point she had to leave work.

The first component of the work disability test contained in K.S.A. 44-510e(a) is the physician's opinion on the loss of the employee's ability to perform the work tasks the employee performed during the 15-year period preceding the accident. Dr. Morris was the only physician to express such an opinion. Dr. Morris reviewed a list of 28 work tasks claimant had performed in the 15 years preceding her accident that were developed by vocational expert James Molski. Mr. Molski was retained by the claimant for the purpose

of interviewing her and developing the work tasks list. Dr. Morris reviewed the work tasks list and opined claimant could no longer perform 10 of the 28 work tasks because of her permanent work restrictions. Therefore, the Appeals Board concludes claimant has lost 36 percent of her ability to perform work tasks.

Respondent also hired a vocational expert to develop a work tasks list that claimant had performed in the 15 years preceding her accident. Karen Terrill, a vocational expert, interviewed the claimant and developed such a list. However, even though Karen Terrill testified in regard to claimant's loss of work tasks, such testimony is not competent evidence because the statute requires a claimant's work tasks loss to be expressed by the physician.

Claimant's testimony established she could not perform the job of racking and unracking as proposed by respondent and the job also exceeded the permanent restrictions placed on claimant by Dr. Morris. Additionally, the respondent refused to return the claimant to any other accommodated job. Accordingly, the Appeals Board finds, as did the Administrative Law Judge, that the claimant has suffered a 100 percent wage loss.

The "new act" requires the work tasks loss of 36 percent to be averaged with 100 percent wage loss resulting in a work disability of 68 percent. The Appeals Board finds 68 percent is the appropriate award of permanent partial general disability benefits and thus affirms the Award of the Administrative Law Judge.

The Appeals Board acknowledges that claimant returned to work following her surgeries on July 12, 1994, and worked one-half time until May 7, 1995, which constitutes a period of 42.86 weeks. The record does not contain evidence as to the amount, if any, of temporary partial disability benefits paid. Mr. Molski's report, admitted into evidence during his deposition, does indicate that claimant was earning $165 per week while working one-half time. Therefore, the wage loss component of the work disability test would have been 42 percent during that period instead of 100 percent. Accordingly, claimant's permanent partial general disability would then have been 39 percent instead of 68 percent. However, since the percentage of permanent partial general disability is applied to the disability weeks in the new act rather than applied to the compensation payment rate, those 42.86 weeks are paid at the full compensation payment rate. *See* K.S.A. 44-510e(a)(2)(3). The Appeals Board concludes the change in the percentage of permanent partial general disability during that period of time does not change the total amount of the award. Therefore, the Appeals Board finds it is not necessary to change the award as computed by the Administrative Law Judge.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge John D. Clark dated December 22, 1995, should be, and is hereby, affirmed as follows:

WHEREFORE, AN AWARD OF COMPENSATION IS HEREBY MADE IN ACCORDANCE WITH THE ABOVE FINDINGS IN FAVOR of the claimant, Janie E. Farris, and against the respondent, Automotive Controls Corporation, a qualified self-insured, and the Kansas Workers Compensation Fund, for an accidental injury which occurred on December 17, 1993, and based upon an average weekly wage of $392.83. Claimant is entitled to 27 weeks of temporary total disability at the rate of $261.89 per week or $7,071.03, followed by 274.04 weeks at $261.89 per week or $71,768.34 for a 68% permanent partial general body disability making a total award of $78,839.34.

As of March 31, 1997, there is due and owing claimant 27 weeks of temporary total disability compensation at the rate of $261.89 per week or $7,071.03, followed by 144.43 weeks of permanent partial compensation at the rate of $261.89 per week in the sum of $37,824.77 for a total due and owing of $44,895.80, which is ordered paid in one lump sum less any amounts previously paid. The remaining balance of $33,943.54 is to be paid at the rate of $261.89 per week until fully paid or further order of the Director.

Per stipulation between the respondent and the Kansas Workers Compensation Fund, the Fund shall be responsible for 10% of the award and the respondent will be responsible for the remaining 90% of the award.

All remaining orders in the Award are adopted by the Appeals Board.

IT IS SO ORDERED.

Dated this _____ day of March 1997.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Garry W. Lassman, Pittsburg, KS
David J. Bideau, Chanute, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director